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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,309	11/12/2003	Jeffrey Rogers	71-846-1	4432

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EXAMINER

YEAGLEY, DANIEL S

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,309

Applicant(s)

ROGERS ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,24-26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20,24-26 and 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Note figure 2 of Christensen et al 6,685,389 filed 9/20, 2002.
2. The drawings are objected to because figures 3, 4, 8, 9, 10, 11 and 12, numerals 212, 218, 226, 310, 312 and 314, require an arrow head at the end of their respective leader line.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because the Title: "Temporary Raised Pavement Marker (TRPM) Applicator Machine For Automatically Applying Pavement Markers To Road Surfaces" should be changed to --Transversely Extending Pivotal Hitch Mechanism--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 34 and 35 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a hitch connector having a transversely extending linear member having a first hinge means disposed at a first end portion of the transversely extending linear member and a second hinge means disposed at a second end portion of the transversely extending linear member, does not reasonably provide enablement for "*a hitch connector having a longitudinally extending linear member having a first hinge means disposed at a first end portion of the longitudinally extending linear member*" and "*a second hinge means disposed at a second end portion of the longitudinally extending linear member*," as claimed. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant should note that the specification failed to clearly recite which elements are to be considered within the term of each means function and therefore examiner could only guess what the meets and bounds are for each means recitation in the claims.

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7. Claims 24 and 28 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a first mounting bracket 326 fixedly mounted upon the first hinge means 314, does not reasonably provide enablement for “*a first mounting bracket means 326 fixedly mounted upon said tow bar means 224*” as cited in lines 22-23 of each claim. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 20, 24, 28, 29, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntosh ‘137.

McIntosh shows a combination hitch mechanism comprising a hitch connector 32 operatively interconnecting a tow bar means 40 of a towed vehicle to a mounting bar means 36 of a towing vehicle (figure 2; vehicles not shown; column 1, line 48-52), wherein the hitch connector comprises a longitudinally extending member 42 having a first and second hinge means disposed at a first and second end portions of the longitudinally extending linear member 42 which permit the towed vehicle to be elevationally movable independently of the towing vehicle, such that the hitch connector includes an adjustment means 58 interconnecting the first

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hinge means to the tow bar means that permits a transverse (vertical) positional adjustment of the towed vehicle with respect tot the towing vehicle, wherein the hitch connector comprises a pair of vertically spaced parallel plates 46, such that a first mounting bracket means is operatively connected to the tow bar means and a second mounting bracket means is fixedly mounted upon the mounting bar means 36, wherein the first and second hinge means disposed at the end portions of the hitch connector comprises a pair of vertically stacked collars members (end portions of element 42 vertically stacked between elements 46) and connected to respective end portions of the vertically spaced parallel plates which includes a fastener means 50 pivotally connecting the collar members to the respective mounting bracket.

Allowable Subject Matter

10. Claims 25, 26 and 30 – 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 20, 24-26 and 28-35 have been considered but are moot in view of the new ground(s) of rejection as now claimed.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Asbury '267, 408 and '052, Stone '568, Rogers '193, Nicholson et al '464 and Christensen et al '389 show a towed pavement marker mechanism. Whitley '639 shows a transversely mounted hitch connector. Pevic '846, Dowe et al '225 and Ayotte et al '841 show a hitch connector having a first and second hinged pivotal hitch mechanism and Christensen et al '389 and Stone '249 shows a marker like that shown in figure 2 of applicant's.

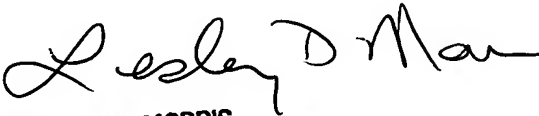
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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.


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